

PUBLIC UTILITIES COMMISSION

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May 22, 1992

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of the Telephone Consumer Protection
Act of 1991, CC Docket No. 92-90

Dear Ms. Searcy:

Please find enclosed for filing an original plus eleven copies of the COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA in the above-referenced docket.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed, postage pre-paid envelope.

Very truly yours,

Ellen S. Levine
Attorney for the People of the
State of California and the
Public Utilities Commission of
the State of California

ESL:ldk

Enclosures (13)

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MAY 26 1992

CC Docket No. 92-90

In 1978 the California State Legislature enacted a statute, later amended, governing the regulation of automatic dialing announcing devices ("ADADs") within the state. Among other things, California has generally proscribed the placement of calls by ADADs which are not accompanied by an unrecorded, natural voice announcement prior to the recorded message. P.U. Code §2874. California has specifically required that the live voice announcement must state the nature of the call and the name, address and telephone number of the business or

organization represented; and inquire whether the person called consents to hear the prerecorded message of the calling party. The calling party must also disconnect the ADAD upon termination of the call by either the calling or called party. P.U. Code §2874 (a)(1)-(3). The statute further limits ADAD-generated calls during the hours between 9 p.m. and 9 a.m. Pacific Standard Time. P.U. Code §2872 (c).

In addition, persons using ADADs are required to seek formal approval from the telephone corporation in whose service area the ADAD-generated calls are placed before connecting the ADAD. The general purpose of this requirement is to ensure that ADAD-generated calls do not create traffic overload conditions. P.U. Code §2875.

Like the TCPA, California has also exempted from these requirements certain uses of ADADs for public health and safety purposes. P.U. Code §2872 (d) & (e).

Attached hereto are the state statutory provisions governing ADADs for the FCC's consideration in crafting regulations implementing the TCPA. Over the last fourteen years, these provisions have worked well to safeguard the interests of both the recipients and providers of calls through ADADs. The FCC may

find that similar regulations may serve the federal public interest, consistent with Congress' intent in the TCPA.

Respectfully submitted,

PETER ARTH, JR.
EDWARD W. O'NEILL
ELLEN S. LeVINE

By:



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the State of California

Dated: May 22, 1992

cost-effective solar energy systems.

(c) The commission shall report its findings and recommendations to the Legislature on or before January 1, 1980.

(Added by Stats. 1978, Ch. 1100.)

CHAPTER 10. TELEPHONE CORPORATIONS

(Heading of Chapter 10 renumbered from Chapter 8 (as renumbered by Stats. 1979, Ch. 373, Sec. 262) by Stats. 1980, Ch. 373, Sec. 4. Note: This chapter originally was added as Chapter 9, commencing with Section 2821, by Stats. 1978, Ch. 877)

Article 1. Automatic Dialing-Announcing Devices

(Article 1 added by Stats. 1978, Ch. 877)

2871. As used in this article, "automatic dialing-announcing device" means any automatic equipment which incorporates a storage capability of telephone numbers to be called or a random or sequential number generator capable of producing numbers to be called and the capability, working alone or in conjunction with other equipment, to disseminate a prerecorded message to the telephone number called.

(Added by renumbering Section 2821 by Stats. 1980, Ch. 373, Sec. 6.)

2872. (a) The connection of automatic dialing-announcing devices to a telephone line is subject to this article and to the jurisdiction, control, and regulation of the commission.

(b) No person shall operate an automatic dialing-announcing device except in accordance with this article. The use of such a device by any person, either individually or acting as an officer, agent, or employee of a person or corporation operating automatic dialing-announcing devices, is subject to this article.

(c) No person shall operate an automatic dialing-announcing device in this state to place a call which is received by a telephone in this state during the hours between 9 p.m. and 9 a.m. California time.

(d) This article does not prohibit the use of an automatic dialing-announcing device by any person exclusively on behalf of any of the following:

(1) A school for purposes of contacting parents or guardians of pupils regarding attendance.

(2) An exempt organization under the Bank and Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) for purposes of contacting its members.

(3) A privately owned or publicly owned cable television system for purposes of contacting customers or subscribers regarding the previously arranged installation of facilities on the premises of the customer or subscriber.

(4) A privately owned or publicly owned public utility for purposes of contacting customers or subscribers regarding the previously arranged installation of facilities on the premises of the customer or subscriber or for purposes of contacting employees for emergency actions or repairs required for public safety or to restore services.

(5) A petroleum refinery, chemical processing plant, or nuclear powerplant for purposes of advising residents, public service agencies, and the news media in its

vicinity of an actual or potential life-threatening emergency.

(e) This article does not prohibit law enforcement agencies and fire protection agencies from placing calls through automatic dialing-announcing devices, if those devices are used for any of the following purposes:

- (1) Providing public service information relating to public safety.
- (2) Providing information concerning police or fire emergencies.
- (3) Providing warnings of impending or threatened emergencies.

Telephone calls placed by law enforcement agencies and fire protection agencies through automatic dialing-announcing devices need not comply with Section 2874.

(f) This article does not apply to any automatic dialing-answering device which is not used to randomly or sequentially dial telephone numbers but which is used solely to transmit a message to an established business associate, customer, or other person having an established relationship with the person using the automatic dialing-answering device to transmit the message, or to any call generated at the request of the recipient.

(g) The commission may determine any question of fact arising under this section.

(Amended by Stats. 1990, Ch. 327, Sec. 1.)

2873. Automatic dialing-announcing devices may be used to place calls over telephone lines only pursuant to a prior agreement between the persons involved, whereby the person called has agreed that he or she consents to receive such calls from the person calling, or as specified in Section 2874.

(Added by renumbering Section 2823 by Stats. 1980, Ch. 373, Sec. 8.)

2874. (a) Whenever telephone calls are placed through the use of an automatic dialing-announcing device, the device may be operated only after an unrecorded, natural voice announcement has been made to the person called by the person calling. The announcement shall do all of the following:

- (1) State the nature of the call and the name, address, and telephone number of the business or organization being represented, if any.
- (2) Inquire as to whether the person called consents to hear the prerecorded message of the person calling.

(b) The calling person described in subdivision (a) shall disconnect the automatic dialing-announcing device from the telephone line upon the termination of the call by either the person calling or the person called.

(Amended by Stats. 1989, Ch. 100, Sec. 1.)

2875. No person shall connect any automatic dialing-announcing device to any telephone line without first making written application to the telephone corporation within whose service area telephone calls through the use of such device are proposed to be placed. In such application, the person shall provide information as to the type of automatic dialing-announcing device proposed to be connected, the time of day such telephone calls are proposed to be placed using such device, the anticipated number of calls proposed to be placed during the specified calling period, the average length of a completed call, and such additional information as the corporation or the commission may require. Upon receiving such an application for service, the corporation shall review the furnished information and, if it appears that calling patterns would create a traffic

overload condition or the service would be detrimental to the services of other customers of the corporation, it may deny the application or modify the application and grant the application as so modified.

(Added by renumbering Section 2825 by Stats. 1980, Ch. 373, Sec. 10.)

2876. Any person violating this article is guilty of a civil offense and is subject to either or both of the following penalties:

(a) A fine of not to exceed five hundred dollars (\$500) for each violation, levied and enforced by the commission, on complaint or on its own motion, pursuant to Chapter 11 (commencing with Section 2100) of Part 1.

(b) Disconnection of telephone service to the automatic dialing-announcing device for a period of time which shall be specified by the commission.

(Added by Stats. 1987, Ch. 732, Sec. 2.)

CERTIFICATE OF SERVICE

I, Ellen S. LeVine, hereby certify that on this 22nd day of May, 1992, a true and correct copy of the foregoing COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA was mailed first class, postage prepaid to known interested parties.

A handwritten signature in cursive script, reading "Ellen S. LeVine", is written over a horizontal line.

Ellen S. LeVine

ldk